Supreme Court of the United States

October Term, 1959.

WALTER HOMENTOWSKI,

Relator-Appellant,

against

STATE OF NEW YORK, on relation of MICHAEL L. CHOMENTOWSKI, a brother of said Appellant, confined in Matteawan State Hospital for the Criminally Insane, and detained therein by the Director thereof, JOHN F. MCNEIL, an Agent of the State Correctional Institution, at Beacon, New York

Defendant-Appellee.

PETITION FOR WRIT OF CERTIORARI.

WALTER HOMENTOWSKI,
Relator-Appellant in Pro Per.,
R. D. No. 4,
Moravia, N. Y.

THE REPORTER COMPANY, INC., Walton, N. Y.—1960

Supreme Court of the United States

WALTER HOMENTOWSKI,
Relator-Appellant,
against
STATE OF NEW YORK, on relation of Michael L. Chomentowski, a brother of said Appellant, confined in Matteawan State Hospital for the Criminally Insane, and detained therein by the Director thereof, John F. McNeill, an Agent of the State Correctional Institution, at Beacon, New York,
Defendant-Appellee.

Petition for Writ of Certiorari.

City of Syracuse,
County of Onondaga, ss:
State of New York,

WALTER HOMENTOWSKI, being duly sworn deposes and says in substance for the purpose of invoking the jurisdiction of the highest Court in the land in his quest to obtain a Writ of Certiorari because of injury sustained by his brother as a result of a denial of constitutional rights.

See *Foster v. Neilston Warehouse Co.*, Ohio, 1941, 61 S. Ct. 376, 311 U. S. 531, 85 L. Ed. 322.

That the said application for certiorari is from a final order dated May 12, 1960, issued in the U. S. Court of Appeals, Second Circuit, upon a direct motion made by the State's Attorney General, which affirmed a final order of the U. S. District Court, dismissing a writ of habeas corpus, with a decision. Said proceedings were had after all exhaustive remedies of state courts.

See: Final order, Circuit Court of Appeals, page 1a, of the appendices.

See also: Decision of U. S. District Court, page 10 of the Record.

See: Page 1a of the Appendices.

In respect to District Court's decision, see "Statement" in Appellant's Brief in U. S. Circuit Court of Appeals at page 2.

That the case is founded upon the following facts:

Appellant's brother was arrested on the 23rd day of June, 1955, by the state troopers in the Town of Salina, Fairmont, N. Y., a suburb of Syracuse, N. Y., on said date in an information charging a violation of Section 1897 of the Penal Law of the State of New York (possession—carrying and use of dangerous weapons—two machine guns).

Upon such arraignment before a Justice of Peace of North Syracuse, N. Y., Fred Root, and upon such arraignment, appellant's brother was not cautioned as to his rights—in respect to an attorney, etc.—as provided by Article I, Section VI of the State Constitution.

Appellant's brother after such arraignment was remanded to the Onondaga County Penitentiary on or about July 5, 1955, and was thereafter transferred to the psychopathic department by an order made by Leo W. Breed, County Court Judge, to inquire into the sanity of appellant's brother.

Since July 5, 1955, appellant's brother remained in said psychopathic department, to and inclusive of the date that he was committed to Matteawan State Criminal Hospital, which was on August 3, 1955.

That during appellant's brother's stay in said psychopathic hospital, the two (2) examining doctors had concluded by their certification to the Court that in their opinion the said Michael L. Chomentowski was unable to understand the nature of the charges against him, or the proceedings, or of making his defense thereto, and upon their findings he was committed to the aforementioned

institution for a period not exceeding sixty (60) days for observation and treatment—such certification was made under Section 74 of the Mental Hygiene Law.

That pursuant to subdivision 7 of the aforesaid law, certification was made by the hospital authorities stating that the said Michael L. Chomontowski was in need of further care and treatment, and a certificate to such effect was filed in the committing County Clerk's office—and as such, such commitment or certification shall become a final order.

It is to be noted here that the said final order as purported by the law in question, subdivision 7 of Section 74 of the Mental Hygiene Law, imparts such authority upon an "*administrative official.*"

Section 76 of the Mental Hygiene Law provides "that if the person certified, or any relative or friend on his behalf, be dissatisfied with the 'final order,' he may within thirty (30) days after the making of such order 'obtain a rehearing and review of the proceedings.'"

The law further states that a jury shall be empaneled to try the question of mental illness, and the question of sanity is determinative.

However, the law in question pertaining to the exact date of its finality serves no notice upon any of the interesting parties.

The order can become final upon any one of these sixty (60) days—and if the order should become final, say perhaps on the first day, and a defendant may move for a trial at the end of 60 or 90 days, it might well be said that the application was not timely, and thus will lose his right to a trial—through the course of a guessing game. If a defendant or an interested party inquires to the Clerk in respect to the date of the "final order" it might justly be refused by the Clerk because the statute directs that all papers be sealed and only exhibited on an order of the Court.

The scope and nature of the proceedings are done in an interlocutory manner, and are civil, and pertains to a condition, not a crime, and the procedure is arbitrary as previously related one must speculate as to when the order becomes final without any notice.

See: Appendix "A," Record on Appeal.

See also: Appendix "B," Record on Appeal, pages 11 to 13, commitment and final order.

See: Pages 4a-6a of the Appendices.

The Code of Criminal Procedure of New York State provides:

> "No person can be punished for a crime except on legal conviction in a court having jurisdiction thereof."

Section 5a of the same Code provides:

> "Where a violation of a right admits of a criminal and also of a civil prosecution, the one is not merged in the other."

Appellant's brother was not convicted of any crime, nor is he detained by virtue of any judgment, decree, final order or mandate issued by any Court of competent jurisdiction, that the sole ground for his detention is an alleged condition pertaining to his mental status, and that order had become final or conclusive by an administrative official.

That during the course of the hearing appellant's brother was kept in close confinement, and as such, he could not expressly waive any rights, as it is a requisite when a person is held in abeyance of a charge or a presentment his defense must be one of insanity, and such a waiver must be expressly or intelligently made.

That on December 3, 1956, a writ of habeas corpus was heard in the Supreme Court of Dutchess County (the county wherein the institution is situated), James W. Bailey, presiding, wherein it was contended he was com-

mitted in violation of fundamental law, and the writ was sustained and ordered back to the court of first instance for further proceedings.

See: Order Sustaining Writ and Ordering Prisoner Back to Court of First Instance.

See: Record on Appeal, Appendix "D," at page 18.

See: Pages 7a-8a of the Appendices.

That pursuant to the aforesaid order sustaining such writ, appellant's brother was remanded back without notification to appellant or any of the interesting parties—and without any notification in respect to a date set for a hearing—appellant's brother was recommitted to Matteawan State Criminal Hospital for the second time on February 26, 1957.

See: Appendix "E," Second Commitment, pages 20-21.

See: Pages 9a-12a of the Appendices.

Appellant maintains that all the previous proceedings had were null and void—for the consequences that followed thereafter—in that he was delivered to the wrong institution—that permits confinement for those who have been duly convicted of crime and his mental status would be a factor only upon the condition and conviction of a crime.

See Section 400 of the Correction Law—Intent and Purpose of Matteawan State Criminal Hospital.

Section 74 and 76 of the Mental Hygiene Law provides commitment to state civil institutions.

Matteawan State Criminal Hospital comes under Correction Department and is maintained by the Commissioner of Corrections.

State civil hospitals comes under Mental Hygiene Commissioner, two (2) separate and distinct departments.

It is further contended that the final order made in appellant's brother's first commitment, which warranted his discharge is unconstitutional in that it serves no notice upon its final order and for the further reason in that

the statute directs an administrative official to delegate judicial power, a function that properly belongs to a Court vested with sovereign judicial power, by which the people give to the Courts by authority of the Constitution and thus creating it as a separate and distinct arm of the government.

If it were granted that Courts possess only such rights and powers as are conferred by statute, they would be mere creatures of the Legislature Department, and not independent branches or departments of the government.

They are not mere creatures of the Legislative Department, but are co-ordinate branches of the government and in their sphere not subject to legislative control.

It is further contended that the second commitment was made in defiance of fundamental law—as has been stated, appellant's brother did not use insanity as a defense—so as to waive any rights accorded to him under the Constitution, leaving an issue of fact and if he so asserted he could demand a trial to be determined by his peers.

The appellant's brother conferred no right upon any attorney which the State appointed and while he was closely confined in the Psychopathic Department—to consent to any determination such attorney may make with the authorities.

It must be remembered the real office of the Courts is the governmental instrumentality through which the subjects of the sovereign may attain exact justice based solely upon truth—and that truth can only be found by the judgment of his peers—and not through the connivance of an appointed attorney made by the Court while the defendant is in confinement.

That your appellant has exhausted all state remedies on direct appeal from the order of the first commitment which was dismissed in the Appellate Division, Fourth Department—and permission to appeal to the Court of Appeals was subsequently denied.

See: Record on Appeal, Affidavit of the Attorney General, page 30.

Appeals from dismissals of all writs were blocked because none of the original papers were ever filed in the clerk's office consisting of the record, and as such precluded your appellant to properly argue the merits of his brother's case on appeal and as such constitute an exhaustion of state remedies.

See: Petition of Writ of Habeas Corpus, Record on Appeal, pages 7-8, and as such come within the meaning of the following cases:

Griffin v. Illinois (351 U. S. 12, 19);
People v. Pitts, 6 N. Y. 2d 288;
People v. Pride, 3 N. Y. 2d 545;
People v. Kalay, 2 N. Y. 2d 278;
People v. Breslin, 4 N. Y. 2d 73.

On July 9, 1959, *In the Matter of Coates*, 8 A. D. 2d pages 444 to 452, therein Mr. Justice Bastow states:

> "It is a recognized rule of statutory construction that Courts will look at the historical background of the statute to obtain aid in interpreting the statute" (2 Sutherland, Statutory Construction, Sec. 5002).

A complete and succinct statement of the statutes upon this subject prior to the enactment of the Consolidated Laws in 1909 is set forth in *Sporza v. German Sav. Bank* (192 N. Y. S. 18).

> "Therein it appears that since 1842 the statutory procedure for the commitment of an alleged insane person to an institution has afforded such person and in later enactments his relatives or friends the absolute right upon demand after his commitment to a jury trial to decide the question of insanity."

Applying the rule of construction enunciated in *Sparze Germain Sav. Bank, supra*, it is sufficient here to inquire whether such trial by jury was in use prior to the adoption of Section 2 of Article I of the 1894 Constitution.

That section provides that "The trial by in all cases in which it has been heretofore used shall remain inviolate forever * * *."

This section was amended by the Convention of 1938 to provide that "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever * * *."

(See 11 Rev. Record, N. Y. State Const. Convention, 1938, p. 1278. See generally Constitutional Guarantee of Jury Trial, 7, Brooklyn L. Rev., pp. 180-204.)

The amendment continued, however, the guarantee of a jury trial in all cases in which it has been used prior to 1894.

It follows that such a right in the instant case was a constitutional one because it had been preserved by the 1894 Constitution.

To emphasize the right of a trial by jury provision is found in *People ex rel. Morriale v. Branham* (291 N. Y. 312).

Therein it appeared that relator had been sentenced to prison for six years.

During that period he was transferred pursuant to statutory authority to an institution for mental defectives. When his fixed term of imprisonment had expired the superintendent of the institution acting pursuant to Sections 460 and 440 of the Correction Law applied to a Judge of a court of record for an order authorizing the further retention of relator after the expiration of his sentence.

Examiners were designated and upon their *ex parte* certificate an order was made committing relator for the further detention.

All the above was done without notice to the prisoner and none was required by the statute.

The Court in holding that relator was entitled to his discharge said (p. 317):

> "An *ex parte* judicial order that a prisoner otherwise entitled to his liberty shall continue to be retained in custody until, at some future time, he may be discharged by his custodian or may secure his release by habeas corpus proceedings would be contrary to the traditions of the common law and perhaps would constitute a violation of rights guaranteed by the Constitution."
>
> "A statute that authorizes a judicial order or decree for a person's imprisonment or restraint must if possible be given a construction which will not offend constitutional guarantees of liberty or offend fundamental concepts of the common law."
>
> "Unless the statute provides expressly or by necessary implication that an adjudication may be made without notice to the person whose detention is sought, *we may reasonably find implicit in the statute a direction that the judicial decision and decree shall be made only in accordance with due process after notice and opportunity to be heard.*" (Italics are mine.)

All of the fundamental regularities were denied to the appellant's brother and all of said acts did violence to the Fourteenth Amendment of the National Constitution wherein it states that "*no state shall deprive any person of his life, liberty,* or property *without due process of law.*" (Italics are mine.)

Appellant has pointed out in his petition which is part of the record and never were controverted, in respect to the allegations of his brother's competency, were submit-

ted before the *nisi prius* Court, without the presence of his brother, and without notice to the finality of his commitment, and to the earlier verifications of two (2) appointed doctors made by the Court, were *ex parte* and none were appointed for the alleged incompetent Michael L. Chomentowski, for the purpose of making an issue and to inquire as to the truth of such allegations, and that the declarations were of such dire consequences that they should have been submitted to a jury of his peers.

The following quotation is worthy to recite wherein it pertains to the origin of "Due Process Guaranty."

> "In the concessions wrung by the Barons from King John and embodied in the Magna Carta in 1215, one in Chapter 39 avows:
>
> "No freeman shall be taken and imprisoned or dissezied (disposed) or exiled or in any way destroyed, nor will we go upon him, nor send upon him, *except by the lawful judgment of his peers and by the law of the land (per legem terriae).*"

The guaranty of the "law of the land" became "by due process of law" in a statute of Edward III (1354) known as the "Statute of Westminster of the Liberties of London."

This is the first known use of the "due process law" phraseology. Coke declared that it meant the same as the "law of the land," and the Supreme Court of the United States in 1856 explained:

> "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words by the 'law of the land' in the Magna Carta."

Subsequent to the ratification of the Fifth Amendment, there was common acceptance of Daniel Webster's definition in arguing the *Dartmouth College v. Woodward*, 17

U. S. (4 Wheat.) in 1819, "by the law of the land," is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

Justice Storey held in his commentaries that the "due process" clause affirms the right to trial according to the process and the proceedings of the common law."

Prior to the enactment of the Fourteenth Amendment of the National Constitution in 1856 the New York Court of Appeals in the *Wynehamer* case (a civil matter) invalidated an anti-liquor enactment of the General Assembly as contrary to the due process guaranty in the State Constitution because the law represented a deprivation as to stocks of liquor on hand.

Here "due process" was held to apply to subject matter or *substance of laws as well as to procedure.*

WHEREFORE, appellant prays this Court will grant him a writ of certiorari.

Sgd. WALTER HOMENTOWSKI
Appellant—In *Pro Per.*
R. D. #4,
Moravia, N. Y.

Subscribed and sworn to before me this
18 day of August, 1960.
Sgd. JOHN C. PARSONS
Notary Public, in the State of New York
Qualified in Onon. Co. No. 34-8285400
My Commission Expires March 30, 1962

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Final Order.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA *ex rel.* WALTER HOMENTOWSKI on behalf of Michael L. Chomentowski,

Relator-Appellant,

v.

DR. JOHN F. MCNEILL, Director, Matteawan State Hospital, Beacon, New York,

Defendant-Appellee.

Motion to dismiss the appeal granted.

May 12, 1960.

C. E. C.
L. P. M.
H. J. F.
U. S. C. J.J.

Decision of U. S. District Court.

The relator admitted in court on the return of the writ the state court remedies have not been exhausted. No appeal was taken from any order of commitment or state remedies sought. This federal court is therefore without jurisdiction. The writ is dismissed. So ordered.

ARCHIE O. DAWSON,
U. S. D. J.

Jan. 28, 1960.

Appendix A.

Certification or First Commitment.

STATE OF NEW YORK, COUNTY COURT.

COUNTY OF ONONDAGA.

Before the Hon. Leo W. Breed, Judge of County Court, County of Onondaga on the 11 day of August, 1955.

IN THE MATTER

of

An Application for the Certification of MICHAEL L. CHOMENTOWSKI, an alleged mentally ill person.

Upon the petition of Fritz Campbell, dated Aug. 4, 1955 and a medical certificate made by two certified examiners, which medical certificate is dated on the 5th day of August, 1955, and which is annexed hereto, and upon such other facts and information as were produced before me (or a referee appointed by me), and being satisfied that the above alleged mentally ill person is mentally ill and a proper subject for custody and treatment in an institution for the mentally ill within the meaning of the statute, and that he is in confinement under a criminal charge, it is therefore hereby

ORDERED, That the said Michael L. Chomentowski be and hereby is adjudged mentally ill and that he be certified to Matteawan State Hospital, an institution for the treatment of mental illness, for observation and treatment for a period not exceeding 60 days.

ORDERED, That upon the filing of a certificate of the director or the physician in charge or the designated medical officer of the institution in the office of the County Clerk prior to the expiration of 60 days from the date of this order, that said alleged mentally ill person is in need of continued care and treatment, this order shall then become final.

ORDERED, That the director of the said hospital forthwith at the time of the admission of said alleged mentally ill person to said hospital, forward a verbatim copy of the entire proceedings herein to the office of the Clerk of Onondaga County and to the Department of Mental Hygiene.

ORDERED, That the said papers so sent shall be sealed in the office of the County Clerk of Onondaga County, and be exhibited only to the parties to the proceedings, or someone properly interested, upon the order of the Court.

Dated Aug. 11, 1955

LEO W. BREED
Judge

examination to determine whether or not he was in such a state of insanity that he was incapable of understanding the charge or the proceedings against him or of making his defense thereto. The psychiatrists appointed by the Director of the Syracuse Psychopathic Hospital have certified that the said Michael L. Chomentowski is in such a state of insanity as to be unable to understand the charge or the proceedings or of making his defense thereto.

Appendix B.

Final Order Rendered by Administration Officer.

STATE OF NEW YORK

DEPARTMENT OF MENTAL HYGIENE

(This form must be filed in the office of the County Clerk and a certified copy must be filed in the office of the Department of Mental Hygiene. A copy should also be retained by the institution.)

CERTIFICATE OF DIRECTOR, PHYSICIAN IN CHARGE, OR DULY DESIGNATED MEDICAL OFFICER

Matteawan State Hospital.

IN THE MATTER of An Application for the Certification of MICHAEL L. CHOMENTOWSKI, an alleged mentally ill person.

County of Dutchess, ss:

1. That pursuant to an order of certification signed by the Hon. Leo W. Breed, Justice, Surrogate or Judge of the County Court of the Onondaga County, on the 11th day of August, 1955, and filed in the office of the County Clerk of Onondaga County, Michael L. Chomentowski was admitted to the Matteawan State Hospital for observation for a period not exceeding sixty days.

2. That he is the director in charge of Matteawan State Hospital at Beacon, N. Y.

3. That he finds the said Michael L. Chomentowski to be mentally ill.

4. That he considers said Michael L. Chomentowski to be in need of continued care and treatment.

5. That the facts stated and information contained in this certificate are true to the best of his knowledge and belief.

SOLON C. WOLFF, M. D.,
Acting Superintendent, Matteawan State Hospital, Beacon, New York.

Subscribed and sworn to before me this
27th day of August, 1955.
WALTER W. HURST,
Notary Public for the State of New York.
Commission Expires March 30, 1956.

STATE OF NEW YORK

DEPARTMENT OF MENTAL HYGIENE

PETITION, CERTIFICATE AND ORDERS

IN THE CASE

of

Chomentowski, Michael L.

Resident of Main St., Burdett, N. Y.
County Comm. from Onondaga
Institution Matteawan State Hosp.
Date of admission 8/3/1955
No. of case book ....., Page .....
No. for year 94
Consecutive No. 9863
Identification No. .....
Date of order of certification 8/12/55
Copy sent to clerk of Onondaga County on 8/12/55
Copy sent to Department of Mental Hygiene on 8/12/55

I, the superintendent of the Matteawan State Hospital, do hereby certify that the document, together with the papers annexed hereto, on which the words of this certificate are impressed is a true copy of the order and all the papers upon which the above named patient was admitted to this hospital.

J. F. McNEILL
Superintendent

Appendix C.

Order Sustaining Writ and Ordered Back to Nisi Prius Court for Further Proceedings Pursuant to the Statute.

STATE OF NEW YORK, SUPREME COURT,

DUTCHESS COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* Michael L. Chomentowski,

vs.

J. F. McNEIL, Superintendent, Matteawan State Hospital, Beacon, New York,

Respondent.

The above named relator having sued out a Writ of Habeas Corpus herein contending that his restraint is illegal because of the failure of compliance with the requirements of the statute under his commitment, and said matter having duly come on to be heard before me at a Trial Term of the Supreme Court of Dutchess County held at the Courthouse in the City of Poughkeepsie, New York, on the 3rd day of December, 1956, and the relator having there appeared and by William L. Clay, Esq., his attorney, in support of said application, and the respondent, J. F. McNeil, Superintendent of Matteawan State Hospital, having appeared by Hon. Jacob W. Javits, Attorney General, (Wm. C. Robbin, Deputy Attorney General, of Counsel) in opposition thereto, and said mat-

ter having been duly argued and the Court having on the 31st day of December, 1956, duly made and filed its decision in writing herein.

It is now upon motion of William L. Clay, Esq., attorney for the relator,

ORDERED, that there having been a failure to meet the jurisdiction requirements, the Writ be and the same hereby is sustained and the relator is hereby remanded to the County Court of Onondaga County for further proceedings pursuant to the statute.

Dated: Jan. 5, 1957

Enter

JAMES W. BAILEY
Justice of the Supreme Court
ROY A. GILLAND
Supreme Court Clerk

Appendix D.

Second Commitment.

At a Term of the County Court, held in and for the County of Onondaga, at the Court House in the City of Syracuse, New York, on the 26th day of February, 1957.

Present:

Hon. Leo W. Breed, Onondaga County Judge.

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF ONONDAGA.

THE PEOPLE OF THE STATE OF NEW YORK vs. MICHAEL L. CHOMENTOWSKI.	Indictment No. 7935.

The above named defendant, Michael L. Chomentowski, having been indicted by the Grand Jury of the County of Onondaga, for the crime and felony of Violation of subdivision 1-a, Section 1897 of the Penal Law (two charges) and the crime and misdemeanor of Violation of subdivision 4, Section 1897 of the Penal Law on the 21st day of January, 1957, by indictment number 7935, and an order having been made by the undersigned on the 22nd day of January, 1957, directing that the said defendant, Michael L. Chomentowski, confined at the time in the Onondaga County Jail at Cedar Street, in the City of Syracuse, New York, be examined as to his sanity, pursuant to the Code of Criminal Procedure; and further directing that the Director of the Syracuse Psychopathic Hospital designate from the staff of said hospital two qualified psychiatrists as defined in the Mental Hygiene

Law, of whom he or she may be one, to make such examination.

And a further order having been made by the undersigned on the 22nd day of January, 1957, directing that the Sheriff of the County of Onondaga deliver to the Syracuse Psychopathic Hospital the said Michael L. Chomentowski for the purpose of such examination and that the said Syracuse Psychopathic Hospital receive the said defendant, Michael L. Chomentowski, for the purpose therein; and further directing that upon the completion of said examination, the Director of the Syracuse Psychopathic Hospital forthwith transmit to this Court in quadruplicate a full and complete report, including the findings of the two qualified psychiatrists who have conducted such examination, to the effect that the defendant, Michael L. Chomentowski, is or is not at the time of such examination in such a state of insanity as to be incapable of understanding the charges against him, or the proceedings, or of making his defense thereto, and otherwise complying with the provisions of Section 662 of the Code of Criminal Procedure; and Dr. Mary F. Brew, Assistant Director of the Syracuse Psychopathic Hospital, having on the 23rd day of January, 1957, designated Doctor Harry A. Steckel and Doctor Hiram G. Hubbell, the qualified psychiatrists, to examine the said defendant, Michael L. Chomentowski, and each of said psychiatrists, before said examination, having subscribed and sworn to the statutory oath required by Section 661 of the Code of Criminal Procedure, and having thereafter examined said defendant, Michael L. Chomentowski, and filed with the Hon. Leo W. Breed, Onondaga County Judge, on the 5th day of February, 1957, a report in quadruplicate showing their findings and their conclusions that the said Michael L. Chomentowski, at the time of their examination, was suffering from a mental disorder; wit, dementia praecox, paranoid form in a state of partial remission, and is in

such a state of idiocy, imbecility or insanity as to be incapable of understanding the charges against him, or the proceedings, of making his defense thereto,

And it further appearing that Matthew Namishia, Attorney, was assigned by the Court to appear for and represent the said defendant, Michael L. Chomentowski, and was duly served with a copy of the report of the examining psychiatrists; and it further appearing that Matthew Namishia, attorney, withdrew from said case with the permission of the Court and that Helen McCarthy Rivette, attorney, was substituted as the attorney for Michael L. Chomentowski, and it further appearing that Helen McCarthy Rivette was duly served with a copy of the report of the examining psychiatrists and having read the report, findings and conclusions of Dr. Harry A. Steckel and Dr. Hiram G. Hubbell, and having consented to the making and entry of this order,

Now, after reading the report of said psychiatrists, and upon motion of Arthur W. Wilson, District Attorney of Onondaga County, New York, it is hereby

ORDERED, that the aforesaid report, findings and conclusions of Dr. Harry A. Steckel and Dr. Hiram G. Hubbell be and the same are hereby confirmed; and it is further

ORDERED, that the said Michael L. Chomentowski, be and he hereby is discharged from imprisonment in the Syracuse Psychopathic Hospital, and that he be forthwith removed and conveyed by the Sheriff of the County of Onondaga, New York, to the Matteawan State Hospital, there to be safely kept in custody and detained until he is no longer in such a state of idiocy, imbecility and insanity as to be incapable of understanding the charge against him, or of making his defense thereto, and then to be returned forthwith to the authority by which he was originally held in custody, namely, the Sheriff of Onondaga County, New York, and the proceedings for

which said Michael L. Chomentowski was in such confinement shall then be resumed pursuant to Section 662-B of the Code of Criminal Procedure; and it is further

ORDERED, that a copy of the psychiatrists' report shall accompany this order.

Enter:

(Signed) LEO W. BREED.
Onondaga County Judge.

(Seal of County Clerk)